IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-156

THE VENDO COMPANY, a Missouri corporation,
Petitioner,

vs.

LEKTRO-VEND CORP., a Delaware corporation,
HARRY B. STONER and **STONER INVESTMENTS, INC.**,
a Delaware corporation,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR PETITIONER

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Opinions Below

The opinion of the Court of Appeals (App.[1] 276), affirming the issuance of a preliminary injunction against enforcement of final state court judgments, is unofficially reported at 1976-1 Trade Cases ¶ 60,919. The opinion of the District Court (App. 226) is reported at 403 F. Supp. 527.

Jurisdiction

The judgment of the Court of Appeals was entered on May 28, 1976 (App. 292). The Court of Appeals denied petitioner's petition for rehearing on July 16, 1976 (App. 293). The petition for a writ of certiorari was filed on

[1] "App." refers to the Appendix filed with this Court pursuant to Rule 36.

August 4, 1976, and was granted on October 4, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Questions Presented

In a previously filed state court proceeding, the Illinois Supreme Court affirmed judgments to compensate petitioner Vendo for respondent Stoner's violation of his state-law fiduciary duties while serving as a Vendo director and officer, and this Court denied certiorari. Before the judgments could be collected, however, Stoner obtained from the Federal District Court a preliminary injunction against enforcement of the judgments on the basis of Stoner's claim that the state proceeding and the judgments violated the federal antitrust laws. The questions presented are:

(1) Whether § 16 of the Clayton Act "expressly authorizes" injunctions against state court proceedings as an exception to the Anti-Injunction Statute, 28 U.S.C. § 2283.

(2) Whether principles of comity and federalism normally applicable to requested injunctions against state court proceedings do not apply where the injunction is sought under § 16 of the Clayton Act.

(3) Whether a single federal district judge has jurisdiction to review and nullify a final decision of the highest court of a state.

(4) Whether state court defendants who have deliberately withdrawn their federal antitrust defense (and thereby have prevented its consideration by the state courts) may on the same federal antitrust ground subsequently obtain a federal preliminary injunction against collection of final judgments entered in the state proceeding.

Statutes Involved

The Anti-Injunction Statute, 28 U.S.C. § 2283, provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Section 16 of the Clayton Act, 15 U.S.C. § 26, provides:

> Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided,* That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

STATEMENT

A. Introduction.

At issue is a preliminary injunction granted by the District Court enjoining proceedings in the Illinois state courts to collect final judgments awarded to petitioner Vendo against respondents Harry B. Stoner ("Stoner") and Stoner Investments, Inc. and affirmed by the Illinois Supreme Court.

Vendo is engaged in the business of manufacturing and marketing certain types of vending machines. During the period 1959 to 1964, Stoner was both an officer and a director of Vendo. Stoner Investments (formerly Stoner Manufacturing Corporation) is a real estate and investment company wholly owned by Stoner and his wife.

In the state case, the Illinois Supreme Court held that Stoner, *during the 1959-64 period when he was both an officer and director of Vendo,* had repeatedly and flagrantly violated his fiduciary duties to Vendo by, *inter alia,* misappropriating a corporate opportunity rightfully belonging to Vendo. The Illinois Supreme Court accordingly affirmed the judgments (in the amount of $7,516,335) in Vendo's favor. *Vendo Co.* v. *Stoner,* 58 Ill. 2d 289, 321 N.E. 2d 1 (1974). This Court denied certiorari, 420 U.S. 975 (1975).

The judgments having become final, Vendo instituted proceedings in the Illinois state courts to collect the judgments. The Stoner interests responded to these collection efforts by reactivating this federal action (which they had filed *over eleven years ago* shortly after Vendo's filing of its state court action) and by obtaining from the District Court a preliminary injunction barring Vendo from taking "any further steps to enforce or collect, or attempt to enforce or collect" the final state court judgments (App. 270). The Court of Appeals affirmed the injunction, and this Court granted certiorari to review that decision.

As already noted, both the state and federal actions were commenced *over eleven years ago.* Vendo filed its action on August 10, 1965 in the Circuit Court of Kane County, Illinois against Stoner and Stoner Investments. The federal action was filed against Vendo two months later on October 21, 1965 by the respondents—Stoner and Stoner Investments (the two defendants in the state court action) plus Lektro-Vend Corporation, a vending-machine manufacturer which (like Stoner Investments) is controlled by the Stoner family.

Both in their federal complaint and their answer to Vendo's state court complaint (by way of affirmative defense), the respondents charged that the state court litigation was brought and was being prosecuted in violation of §§ 1 and 2 of the Sherman Act. (App. 17-19, 21-25, 31-32.) (Subsequently, as pointed out *infra,* pp. 11-12, Stoner and Stoner Investments voluntarily withdrew their federal antitrust defense in the state action.)

B. The Facts Determined by the Illinois Supreme Court.

In the marathon state court proceeding, it was determined by the Illinois Supreme Court that Stoner, individually and through Stoner Investments, had violated his fiduciary duties to Vendo *during the 1959-64 period when he was an officer and director of Vendo* (a) by secretly supporting the development and marketing of a new type of candy vending machine by Lektro-Vend, (b) by withholding the facts concerning his involvement with Lektro-Vend and misleading Vendo with regard to its possible acquisition of the Lektro-Vend machine, and (c) by misappropriating Vendo's opportunity to acquire the machine.

It was also determined that Stoner and Stoner Investments had unlawfully breached the non-competition covenants in their agreements with Vendo, but the Illinois Supreme Court held that in any event the judgments were proper on the basis of Stoner's violation of his fiduciary duties "[q]uite apart from any liability which may be predicated upon a breach of the covenants against competition . . ." and "[r]egardless of the . . . disposition of those restraint-of-trade issues . . ." (App. 111, 117).

The basic facts are set forth in the Illinois Supreme Court's opinion written by Mr. Justice Schaefer (App. 100-23).

As there pointed out, Stoner was the president and the controlling owner of Stoner Manufacturing Corporation (now Stoner Investments), a company which had been en-

gaged in the business of making and selling candy-vending machines throughout the United States. In April, 1959, Vendo and Stoner Manufacturing entered into a contract for the purchase by Vendo of the assets of Stoner Manufacturing. Vendo's "purpose in making the acquisition was in part to add a candy-vending machine to its line. So far as Harry B. Stoner was concerned, the motive for the sale appears to have arisen from a concern that the poor state of his health would prevent him from continuing in the active direction of his company." (App. 101-02.)

Under the sale contract Vendo agreed to pay Stoner Manufacturing $3,400,000 in cash, 60,000 shares of Vendo stock, and a share of certain profits realized from the use of the assets being purchased for a period of 10 years.[2] A non-competition covenant for the same 10-year period was also provided.[3]

On June 1, 1959, Stoner executed an employment contract with Vendo, providing for compensation of Stoner at a salary of $50,000 a year. "Stoner was hired by [Vendo] on the basis of the skill and experience which he could bring to [Vendo]" (App. 112). The employment contract also contained a non-competition covenant.[4] Stoner became a director of Vendo as well as president of the Company's Aurora Division (formerly the Stoner Manufacturing plant).

[2] Vendo agreed to pay Stoner Manufacturing for a period of 10 years (or until such time as Vendo might exercise an option to purchase the Stoner plant) all profits in excess of $250,000 realized from the use of the assets being purchased, and for a period of 10 years 25% of the income received from foreign sales realized from the use of those assets.

[3] Stoner Manufacturing (now Stoner Investments) agreed that ". . . for a period of ten (10) years after the closing, the Company will not in any manner, directly or indirectly, enter into or engage in the United States or any foreign country in which Vendo or any affiliate or subsidiary is so engaged, in the manufacture and sale of vending machines or any business similar to that now being conducted by the Company." (App. 102-03.)

The candy-vending machine which was being manufactured by Stoner Manufacturing at the time it sold its assets to Vendo in 1959 was called a "drop shelf" machine. The "Lektro-Vend" model subsequently developed with Stoner's secret help, at the same time he was an officer and director of Vendo, possessed several significant advantages over the drop-shelf model (including a "first in, first out" feature) which made it popular and successful with companies which purchase and service vending machines. (App. 104.)

As the result of research into the possibility of developing a vending machine of this character, Vendo in August, 1959, had built two developmental models. Sketches of these were shown to Stoner.[5]

In mid-1960, two engineering employees of Vendo, Rod Phillips and his son William (who had previously worked for Stoner Manufacturing), resigned their employment at

[4] "5. During the term of this agreement and for a period of five (5) years following the termination of his employment hereunder, whether by lapse of time or by termination as hereinafter provided, Stoner shall not directly or indirectly, in any of the territories in which the Company or its subsidiaries or affiliates is at present conducting business and also in territories which Stoner knows the Company or its subsidiaries or affiliates intends to extend and carry on business by expansion of present activities, enter into or engage in the vending machine manufacturing business or any branch thereof, either as an individual on his own account, or as a partner or joint venturer, or as an employee, agent or salesman for any person, firm or corporation or as an officer or director of a corporation or otherwise . . ." (App. 103-04.)

[5] While agreeing on the desirability of developing a machine with such capabilities, Vendo personnel considered the models to be defective in certain mechanical respects and too expensive to produce, and the research project to develop such a machine was accordingly shelved.

Vendo and solicited Stoner's financial support. In late 1960 or early 1961, Rod Phillips approached Stoner with a request that Stoner provide financial support to cover the development of a vending machine of the new type, and Stoner agreed to do so. Interest-free loans which aggregated some $200,000 were made to Phillips by Stoner Investments during 1961 and 1962. Stoner also made available rent-free a building owned by him for use in conducting the development work. In 1961, when two more Vendo employees resigned, they joined Rod and William Phillips on the research and development project and received monthly salaries aggregating $1,150 from Stoner Investments. (App. 105-06.)

By October, 1962, the developmental work on the new machine had progressed to the point where a prototype could be exhibited at a trade show, and it won a very favorable reaction in the industry. In December, 1962, Stoner asked Vendo's board chairman Elmer Pierson, to be released from his employment contract, stating that he had an opportunity to invest in the manufacture and sale of the Lektro-Vend machine. *"Stoner did not disclose that he had already been giving support to the development of Lektro-Vend."* (App. 106, italics added.)

Vendo refused to release Stoner from his contract, and Pierson informed Stoner that Vendo itself had an interest in buying the Lektro-Vend machine. Pierson asked Stoner to ascertain if Rod Phillips had any interest in selling it and, if so, to set up a meeting between Phillips and representatives of Vendo. Stoner then wrote one of Vendo's vice-presidents, Spencer Childers, that Phillips would be willing to sell if the price were high enough. Stoner told Vendo that Phillips wanted $1,500,000 and that a third company had expressed a willingness to pay that amount. In March, 1963, Stoner informed Vendo that he had told Phillips that he assumed, in the absence of further word from Childers, that Vendo no longer had an interest in making the purchase. Childers wrote back stating that

Vendo still had such an interest, but that the asking price of $1,500,000 was too high. (App. 107.)

In December, 1962, Stoner's sister-in-law—Mrs. Ruth Netrey—lent Phillips $350,000, which was later increased to $525,000, at an interest rate of 4½%. No payment was made on either principal or interest until September, 1963, at which time Mrs. Netrey received a note for the amount due her from the Lektro-Vend Corporation, which had just been organized. The proceeds of the loan were used in part to pay off the loan due Stoner, as Mrs. Netrey and Stoner each knew. The original stockholders of Lektro-Vend Corporation were Rod Phillips and William Phillips, certain other employees, and Mrs. Netrey, who held 50% of the stock. (App. 108.)

During 1963 Rod Phillips proceeded with his plans to set up a manufacturing operation, and in March or April Stoner Investments completed the construction of a building in Aurora which was made available to Phillips for this purpose.

Stoner had a further conversation with Pierson in the spring or summer of 1963, in which Pierson inquired as to the actual extent of Stoner's involvement with Phillips. Stoner told him that the relationship had been confined to loans and that these had since been repaid by another person. Stoner did not disclose that this other person was his sister-in-law. *"This conversation marked the first occasion on which Stoner disclosed any involvement with Lektro-Vend, and the disclosure was far from complete."* (App. 108, italics added.)

In March, 1964, Stoner Investments contracted to sell to Lektro-Vend Corporation the new plant which had been built by Stoner Investments during the previous year. The purchase was made by Lektro-Vend with the proceeds of a bank loan which was advanced subject to an agreement by Stoner Investments to guarantee the repurchase of the property in the event of a default on the loan.

Stoner ceased being a Vendo director in March or April of 1964. Stoner's contract of employment terminated June 1, 1964, and it was not renewed. On June 10, 1964, Lektro-Vend issued 5,000 shares of stock to Mrs. Stoner, and on July 15 it issued 5,000 shares of stock to Stoner Investments. (App. 109.)[6]

C. The Decisions of the Illinois Courts.

In December, 1966, the state trial court sitting without a jury found in favor of Vendo. In response to "the question: What is the responsibility of a man who is in a position of trust and a fiduciary capacity to the stockholders?", the court stated that "I find it most difficult to come up with an answer that that sort of conduct is conducive and in compliance with the responsibility as a director of a corporation". (App. 41.) The court initially entered a judgment against the two defendants jointly for $1,100,000 and a judgment against Stoner individually for $250,000. (App. 47.)

The defendants appealed to the Illinois Appellate Court, which in 1969 sustained the trial court's conclusion concerning Stoner's misconduct[7] but remanded the case to the trial court for a further hearing with respect to the amount of damages recoverable by Vendo. (App. 49-81.)

The Illinois Appellate Court also sustained the validity of the non-competition covenants in the sale and employment contracts. It found that the defendants' breaches of the covenants occurred "in-term", i.e., during the period

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[6] On March 28, 1976, Stoner died; and on October 1, 1976, Mrs. Stoner as his administrator was substituted as a party plaintiff in the District Court.

[7] In addition to Stoner's violation of his fiduciary duties as an officer and director, Stoner had also been held liable by the trial court on the ground of theft of trade secrets belonging to Vendo, but this alternative ground was reversed by the Illinois Appellate Court (App. 61-64) and the issue was not pursued thereafter.

specified by the contract in which Stoner was to be paid to perform services for Vendo and in which Stoner Investments was to be paid as additional compensation a percentage of Vendo's profits derived from the assets which it had sold to Vendo. (App. 64-70.)

On the other hand, the Illinois Appellate Court held that the trial court had erred in striking the defendants' federal antitrust defense and that they were entitled on remand to a hearing on the issue. (App. 77-79.) However, just before the second trial was to commence, Stoner and Stoner Investments *formally withdrew their federal antitrust defense which the Illinois Appellate Court had at their behest sustained and had directed the trial court to consider.* (App. 82.)

At the second trial, in 1971, on the basis of additional evidence on damages, the trial court awarded a judgment to Vendo in the amount of $170,835 against Stoner and a judgment against both defendants for $7,345,500. (App. 89-91.) The defendants again appealed to the Illinois Appellate Court, which in 1973 affirmed the judgment against Stoner but reversed the judgment against the two defendants jointly and remanded the case for a further hearing. (App. 94-99.) Each side filed a petition for leave to appeal to the Illinois Supreme Court, and both petitions were allowed.

In its opinion, written by Mr. Justice Schaefer, the Illinois Supreme Court sustained both judgments, strongly condemning Stoner's and Stoner Investments' "wrongful acts" (App. 123), "misconduct" (App. 114), and "misappropriating the Lektro-Vend" machine. (App. 115.) The Court held (App. 111, 112-13):

> *"Quite apart from any liability which may be predicated upon a breach of the covenants against competition contained in the sales agreement and the employment contract,* it is clear that Stoner violated his fiduciary duties to plaintiff during the period when he was a director and an officer of plaintiff. . . .

> *"Stoner had a foot in each camp.* Not only did his undisclosed individual interest in controlling the further development and ultimately the manufacture and sale of the Lektro-Vend create the possibility of his taking an unfair advantage of plaintiff, but the evidence gives strong indication that he actually misled plaintiff while he was purportedly acting as plaintiff's agent with regard to plaintiff's possible acquisition of the Lektro-Vend." (Italics added.)

With respect to the non-competition covenants, the Illinois Supreme Court held (App. 116-18):

> "The appellate court concluded, in our opinion correctly, that defendants' activities directed toward the development and thereafter the marketing of the Lektro-Vend, consisting of substantial financial aid, and the provision of physical facilities, as well as defendant's ownership interest in the Lektro-Vend enterprise, were so substantial as to go beyond the limits established by the covenants.
>
> *"Regardless of the appellate court's disposition of those restraint-of-trade issues, the defendants may, as we have pointed out, be held liable on the ground of a breach of fiduciary obligation on the part of Stoner. . . .*
>
> "At the original trial defendants raised as an affirmative defense and by way of counterclaim a charge that the sale agreement and the employment contract violated both the Illinois Antitrust Act (Ill. Rev. Stat. 1973, ch. 38, par. 60-1 *et seq.*) and *the Federal antitrust laws* (15 U.S.C. sec. 1 *et seq.*). *The latter charge was withdrawn by defendants on the remand,* and references in the record indicate that at some point a suit was filed against plaintiff in the United States District Court for the Northern District of Illinois relating to the alleged violations of Federal law.

> "With respect to the State antitrust claim . . . the Illinois act, having been enacted in 1965, long after the contracts here in question were entered into, cannot properly form the basis of a counterclaim by defendants." (Italics added.)

On November 27, 1974, the Illinois Supreme Court denied a petition for rehearing filed by Stoner and Stoner Investments. On January 28, 1975, Mr. Justice Rehnquist denied their request for a stay of execution pending consideration of their petition for certiorari. On March 17, 1975, this Court denied the petition for certiorari (420 U.S. 975).

D. The Proceedings Below.

1. The Motion for Preliminary Injunction.

On January 2, 1975, after Vendo commenced efforts to collect its judgments, the respondents filed an amended complaint in the federal case, not only reasserting their antitrust claim with respect to the state action but also claiming under 42 U.S.C. § 1983 a denial of due process in the state action. (App. 124-59.)

Thereafter, on January 23, 1975, Stoner and Stoner Investments (but not plaintiff Lektro-Vend) filed a motion for a preliminary injunction (App. 177), contending that, if Vendo were permitted to collect the judgments against them, they would be without funds to pay their attorneys to prosecute their lawsuit against Vendo. They also claimed that collection by Vendo would result in Vendo's acquiring control of Lektro-Vend.

In its response, Vendo formally offered to enter into a consent decree which would preclude Vendo's acquiring such control of Lektro-Vend. (App. 208-10.)[8]

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[8] After the District Court issued its opinion but before the District Court entered its injunction order, Vendo proposed an even more far-reaching consent decree. This second proposed consent decree would have categorically prohibited Vendo from acquiring *any stock of either Lektro-Vend or Stoner Investments.* (App. 257-59.)

In respondents' *post*-hearing *reply* brief, after Vendo had submitted its brief, Lektro-Vend moved to join in the request for injunctive relief.

2. The District Court's Decision.

In its decision on May 29, 1975, granting the preliminary injunction, the District Court acknowledged that it did not have jurisdiction to collaterally review the state court judgments. Accordingly, the Court refused to entertain respondents' due process claim based upon 42 U.S.C. § 1983. (App. 226-27, n.1.) However, the District Court concluded that ". . . the state court proceedings must be examined by this Court for the purpose of determining whether Vendo prosecuted those cases as part of an anti-competitive scheme". (App. 232.) The District Court (App. 232, n.4) stated that the Illinois Supreme Court opinion "makes such a review imperative" because the Illinois Court "expressly refused to consider the allegations that the state proceedings were part of an anticompetitive scheme" (notwithstanding the fact that the only reason the Illinois Supreme Court did not consider Stoner's federal antitrust defense was because it had been voluntarily withdrawn by Stoner —see pp. 11-12, *supra*).

On that basis, the District Court made its own conclusory findings and held that there had been an adequate showing of likelihood of ultimate success. The District Court, however, neither found nor held that enforcement of the judgments would violate the antitrust laws. Instead, the Court merely concluded that the non-competition covenants "were overly broad" (App. 233) and that "There is persuasive evidence that Vendo's activities in its litigation against the Stoner interests in Illinois state court were not a genuine

attempt to use the adjudicative process legitimately" (App. 237, *citing only events in the 1963-66 period*).[9]

The District Court held it to be immaterial that Vendo's state action had been found to be *meritorious* and that the Illinois Supreme Court—"[q]uite apart from" and "[r]egardless of" the non-competition covenants—had upheld the judgments on the basis of Stoner's violation of his fiduciary duties as a director and officer. The District Court reasoned that Stoner would not have been a director of Vendo if it had not been for the 1959 agreements, and that "[t]he 1959 agreements were cut from one piece of anti-competitive cloth and cannot be snipped apart." (App. 234-35.)

The District Court held that § 16 of the Clayton Act is a statute which "expressly authorizes" stays of state court proceedings within the first exception provided in 28 U.S.C. § 2283. The District Court also held § 2283 inapplicable on the ground that the injunction is necessary to protect the jurisdiction of the Court, within the second § 2283 exception, since in the Court's view (notwithstanding Vendo's offer of a consent decree with respect to both those companies) two of the three plaintiffs, Stoner Investments and Lektro-Vend, might be eliminated from the case by Vendo's further collection efforts. (App. 239-41.)

The District Court further held that "Principles of comity and federalism do not prevent the issuance of an injunction . . ." since "The federal action here is based in part on the very proceeding sought to be enjoined." (App. 241.)

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[9] The District Court also stated that, "*If* the state court litigation was itself part of the anticompetitive scheme, a judgment arising from such litigation is not an ordinary debt" (App. 238, italics added), and "*If* federal law is violated by continuation of the state action the paramount national interest requires court intervention" (App. 241, italics added), but reached no conclusion as to *whether* continuation of the state action (i.e., through collection of the state judgments) *would* violate the antitrust laws.

The Court's decision also granted Lektro-Vend's post-hearing request to join in the preliminary injunction motion. (App. 227, n.2.)

On June 27, 1975, the District Court issued its Order Granting Preliminary Injunction (App. 266-75) prohibiting all efforts by Vendo to collect its final state court judgments and requiring respondents to post an injunction bond of only $2,500.00.

3. The Court of Appeals' Decision.

On May 28, 1976, the Court of Appeals affirmed the District Court's decision.

In its opinion, the Court of Appeals held that 28 U.S.C. § 2283 did not bar the injunction. The Court held that § 16 of the Clayton Act "expressly authorizes" injunctions against state court proceedings, within the scope of that exception to § 2283, on the ground that § 16 grants equitable jurisdiction only to federal courts. (App. 286, 288.)

The Court of Appeals also rejected Vendo's argument that, entirely apart from the absolute prohibition of § 2283, principles of comity and federalism barred the District Court's injunction against enforcement of the decision of the highest court of a state. The Court of Appeals held: "The principle of comity has no applicability when the exclusive remedy for an injury lies in the federal court." (App. 289.)

In addition, the Court of Appeals expressly approved the District's Court's assertion of its jurisdiction to review a final decision of the Illinois Supreme Court. (App. 289.)

SUMMARY OF ARGUMENT

The decision below sanctions a procedure whereby a single federal district judge—through the device of a preliminary injunction—has effectively nullified final state court judgments which the Illinois Supreme Court affirmed after nearly ten arduous years of litigation and which this Court declined to review. The district judge, moreover, did so on the very same federal claim which the plaintiffs in this case had deliberately withdrawn as a defense in the state proceeding.

Such a procedure is fundamentally at war with settled law regarding the Anti-Injunction Statute, principles of comity and federalism, and collateral review of state court judgments.

I.

The Anti-Injunction Statute, 28 U.S.C. § 2283 (*supra*, pp. 2-3), provides that a federal court "may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." This Court has repeatedly admonished that the exceptions to § 2283 are to be strictly and narrowly construed to prevent needless friction between state and federal courts.

A.

Section 16 of the Clayton Act (*supra*, p. 3) does not "expressly authorize" injunctions against state court proceedings within the meaning of the first exception to § 2283. By its terms, § 16 does not provide for such injunctions; if anything, the statutory language is directly to the contrary. Nor is there any basis for construing § 16 to authorize such injunctions through some implied grant of power.

1. Prior to the District Court's decision in this case, no court had ever held that § 16 "expressly authorizes" injunctions against state court proceedings. Indeed, every court which had expressly considered the issue—including the Second and Fourth Circuits—had uniformly held to the contrary.

2. Only eight federal statutes have been recognized by this Court to "expressly authorize" injunctions against state

court proceedings. See *Mitchum* v. *Foster,* 407 U.S. 225, 234-35 (1972). Each of these eight statutes either contains specific language providing for stays of state proceedings or, in the absence of such language, necessarily requires by its very nature and function that conflicting state judicial proceedings must be enjoined in order to achieve the statutory purpose. Thus, in *Mitchum,* this Court found that "the very purpose of § 1983" of the Civil Rights Act was to transform the previously existing relationship between federal and state courts and to prevent abuses by (*inter alia*) state courts.

Section 16 of the Clayton Act clearly is not a statute of this type. Even apart from the absence of specific language providing for stays of state proceedings, there is not the slightest basis (and the Court of Appeals pointed to none) for believing that § 16 was designed to prevent abuses by state courts or that it was "the will of Congress" to place injunctive restraints on state court proceedings.

The crux of the decision below is that the state suit would allegedly be enjoinable in the absence of § 2283 and therefore the application of § 2283 would impair § 16 jurisdiction *in this case.* But the whole object of § 2283 is to bar certain injunctions which might otherwise be appropriate, "regardless of how extraordinary the particular circumstances may be" (*Mitchum,* 407 U.S. at 229). Plainly the possible impact on any particular case—as distinguished from achievement of an overall statutory purpose—does not justify a conclusion that a federal statute "expressly authorizes" stays of state court proceedings.

Indeed, if it were otherwise, then *every* federal statute authorizing injunctive relief would fall within the "expressly authorized" exception and would permit enjoining state court proceedings—a result which is completely antithetical to the entire purpose of § 2283 and this Court's interpretation of it.

B.

The "necessary in aid of jurisdiction" exception to § 2283 —which was relied upon by the District Court but not by the Court of Appeals—also is plainly inapplicable in this case.

According to the District Court, the preliminary injunction was "necessary" to its jurisdiction on the ground that Vendo's enforcement of its judgments might result in Vendo's taking control of Stoner Investments and Lektro-Vend, thereby possibly eliminating two of the three plaintiffs in the federal suit as independent parties. Such reasoning is doubly erroneous.

First of all, Vendo had offered a consent decree which would eliminate any possibility of Vendo's acquiring control of those two plaintiffs. Therefore, an injunction against enforcement of the state court judgements could not possibly be "necessary" to the District Court's jurisdiction.

Second, there is wholly lacking any authority for holding that a state court proceeding may be enjoined to preserve federal plaintiffs' compliance with the "case or controversy" requirement. Even more clearly, there is no justification for enjoining a state court proceeding to preserve the standing *of only some of the plaintiffs* in the federal case. Here, irrespective of the standing of Stoner Investments and Lektro-Vend, Stoner (or his administrator) would continue to be an adverse party and, therefore, the District Court would not in any event be deprived of jurisdiction.

II.

Even apart from § 2283, the injunction granted by the District Court violates fundamental principles of comity and federalism which must restrain a federal court when asked to enjoin a state court proceeding. These principles apply even where an injunction is sought under a federal statute that "expressly authorizes" injunctions against

state court proceedings. See *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592 (1975).

Considerations of comity and federalism are especially critical where, as in the present case, (1) the attack upon state court proceedings is against final judgments which had been affirmed by the highest court of the state and (2) the attack is on grounds which actually were presented to the state courts and which would have been adjudicated by the state courts except for respondents' deliberate withdrawal of those issues from the state court proceeding.

The Court of Appeals clearly erred in holding—in direct conflict with Fifth Circuit decisions—that principles of comity and federalism do not apply to injunctions issued under § 16 of the Clayton Act. Contrary to the decision below, a federal injunction against the final state court judgments was not the respondents' "exclusive remedy" under the federal antitrust laws. Instead, respondents had an opportunity for full and fair litigation of the antitrust issues in the state court proceeding—and could then have presented the matter to this Court on certiorari—but they chose for their own tactical reasons to withdraw those issues from the state courts' consideration.

III.

The District Court also lacked jurisdiction to reverse, review or revise the final judgments of the state courts by collateral attack. Such a judgment, affirmed by the highest court of the state, can be reviewed only by this Court (which in this case denied certiorari) and not by any lower federal court.

ARGUMENT

The decision below and the theories offered to support it constitute an affront to the most basic principles underlying federal-state relations and the use of federal equity power.

As set forth more fully in the Statement (*supra*, pp. 11-13), the Illinois Supreme Court, after nearly ten arduous years of litigation, affirmed judgments to compensate Vendo for Stoner's flagrant violations of his state-law fiduciary duties while serving as a Vendo director and officer. This Court denied certiorari, and the state judgments were unequivocally final and entitled to full faith and credit. But then, in order to forestall collection of the judgments against them, Stoner and Stoner Investments hit upon a new strategem. They obtained from the District Court a preliminary injunction against enforcement of the judgments on the claim that the state suit from its very inception was violative of the federal antitrust laws—the same claim, moreover, which they had deliberately withdrawn as a defense in the state proceeding (and thereby prevented the state courts and this Court from adjudicating in that proceeding).

The ramifications of this procedure—approved by the Court below—are, to say the least, extraordinary. It would give to every district judge the power to review, set aside, and nullify final state court judgments through the preliminary injunction device. It would reduce the highest tribunals of any state to the status of special masters subject to *de novo* control by a single district judge. Nor is there any reason why such control should be exercised only under the federal antitrust laws; on precisely the same theory, final state court judgments—even, as here, after the denial of certiorari—could likewise be preliminarily enjoined under myriad other federal statutes as well.

To permit this new avenue of appeal from a final state court judgment to a federal district court would undermine the integrity of state judicial processes and thrust the

state and federal courts into frequent and bitter conflict. It also would—as this "Bleak House" case (now in its *twelfth* year) dramatically illustrates—significantly contribute to indefensible delay in the disposition of litigation.

As we shall show, the decision below sanctioning such a procedure is fundamentally at war with settled law regarding the Anti-Injunction Statute, principles of comity and federalism, and collateral review of state court judgments.

I. THE PRELIMINARY INJUNCTION IS BARRED BY 28 U. S. C. § 2283.

The Anti-Injunction Statute, 28 U.S.C. § 2283 (*supra,* pp. 2-3), provides that a federal court "may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

This statute represents "a limitation of the power of the federal courts dating almost from the beginning of our history and expressing an important Congressional policy—to prevent needless friction between state and federal courts". *Oklahoma Packing Co.* v. *Oklahoma Gas and Electric Co.,* 309 U.S. 4, 8-9 (1939). See also *Toucey* v. *New York Life Insurance Co.,* 314 U.S. 118, 129 (1941); *Mitchum* v. *Foster,* 407 U.S. 225, 232-233 (1972).

Pursuant to this fundamental policy, the statute constitutes an absolute bar to a federal court injunction against pending state proceedings except where one of the three specifically stated exceptions applies. *Atlantic Coast Line R. Co.* v. *Brotherhood of Locomotive Engineers,* 398 U.S. 281, 286-287 (1970); *Mitchum* v. *Foster,* 407 U.S. 225, 228-29 (1972).

This Court has repeatedly held that the three exceptions to § 2283 are to be strictly and narrowly construed. Thus, in *Amalgamated Clothing Workers of America* v. *Richman Bros.,* 348 U.S. 511 (1955), the Court stated, in referring to

the enactment in 1948 of § 2283 in its present form, that ". . . Congress made clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation" (p. 514) and that *"This is not a statute conveying a broad general policy for appropriate ad hoc application"* (pp. 515-516, italics added). Similarly, in the *Atlantic Coast Line* case, *supra,* the Court admonished that *"the exceptions should not be enlarged by loose statutory construction."* (398 U.S. at 287, italics added; see also p. 297.)

In this case, the District Court held that two of the exceptions applied; the Court concluded that § 16 of the Clayton Act "expressly authorizes" injunctions against state court proceedings, and that such an injunction was also "necessary in aid of" the District Court's jurisdiction. (App. 239-41.) The Court of Appeals rested its decision as to § 2283 solely on the "expressly authorized" exception and did not pass on the applicability of the "in aid of jurisdiction" exception.

Both decisions below are directly contrary to the established law interpreting § 2283 and the clearly defined legislative and judicial policies against *ad hoc* expansion of the exceptions to the statute.

A. Section 16 of the Clayton Act Does Not "Expressly Authorize" an Injunction to Stay Proceedings in a State Court.

By its terms, of course, § 16 of the Clayton Act (set forth *supra,* p. 3) plainly does not "expressly authorize" an injunction to stay proceedings in a state court. On the contrary, the statute merely permits ". . . injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws . . ., when and *under the same conditions and principles* as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, *under the rules governing such proceedings . . .*" (italics added). If anything, the text of the statute clearly

indicates that § 16 injunctions are subject to the usual and customary restrictions on federal equity power—including, preeminently, § 2283's restriction against enjoining state proceedings.

Furthermore, as we shall show, § 16 does not "expressly authorize" injunctions against state court proceedings by way of some implied grant of power.

1. The Decisions Below Are Contrary to a Previously Settled Interpretation of § 2283 and § 16.

In accordance with the principle that § 2283 exceptions are to be strictly construed, and as pointed out in *Mitchum* v. *Foster, supra,* 407 U.S. at 234-37, only a small number of federal statutes have been found by this Court to "expressly authorize" injunctions against state court proceedings. And, prior to the District Court's decision in this case, *no court had ever held that § 16 was such a statute.* On the contrary, every court which had expressly considered the issue—including the Second and Fourth Circuits—had uniformly held that § 16 does *not* "expressly authorize" injunctions against state court proceedings.[10]

[10] See *Lyons* v. *Westinghouse Electric Corp.*, 201 F.2d 510 (2d Cir.), *cert. denied,* 345 U.S. 923 (1953), affirming 109 F. Supp. 925, 926 (S.D.N.Y. 1952); *Potter* v. *Carvel Stores of N.Y., Inc.,* 314 F.2d 45 (4th Cir. 1963), affirming 203 F. Supp. 462 (D. Md. 1962); *Reines Distributors, Inc.* v. *Admiral Corp.,* 182 F. Supp. 226 (S.D.N.Y. 1960); *Bascom Launder Corp.* v. *Telecoin Corp.,* 9 F.R.D. 677 (S.D.N.Y. 1950); *Avon Pub. Co.* v. *American News Co.,* 143 F. Supp. 516 (S.D.N.Y. 1956); *American Manufacturers Mutual Ins. Co.* v. *American Broadcasting-Paramount Theatres, Inc.,* 1966 Trade Cases ¶ 71,918 (S.D.N.Y.). See also the recent decision in *Carter* v. *Ogden Corp.,* 524 F.2d 74, 75 (5th Cir. 1975), reversing an injunction issued under § 16 of the Clayton Act and holding "that under 28 U.S.C.A. § 2283 this injunction was prohibited. . . ." On the other hand, compare *Sar Industries, Inc.* v. *Monogram Industries, Inc.,* 1976-1 Trade Cases ¶ 60,816 (C.D. Cal.), relying on the District Court's decision in this case.

Lyons v. *Westinghouse Electric Corp.,* 201 F.2d 510 (2d Cir.), *cert. denied,* 345 U.S. 923 (1953), involved circumstances remarkably similar to those present in the instant case. Westinghouse had sued Lyons and others in the New York state courts for breach of a contract and an accounting. The state court defendants raised a federal antitrust defense in the state suit, claiming that the contract violated the antitrust laws. Thereafter, they brought suit in the federal court against Westinghouse under the federal antitrust laws advancing the same federal antitrust grounds which they had asserted by way of defense in the state proceeding. The District Court held that it could not enjoin the state proceedings, "even though the [federal] Anti-Trust Laws are involved in both actions, as in this case," because *"a stay of these State court proceedings is not expressly authorized by any act of Congress,* and it is not required in aid of this court's jurisdiction or to effectuate its judgments." 109 F. Supp. 925-26 (S.D.N.Y. 1952) (italics added). The Court of Appeals for the Second Circuit affirmed, specifically holding that the District Court *"rightly held that 28 U.S.C.A. § 2283 prevents the issuance of such a stay."* 201 F.2d at 510 (italics added).[11]

[11] The Court below placed heavy reliance on *Studebaker Corp.* v. *Gittlin,* 360 F.2d 692, 698 (2d Cir. 1966). (App. 287-88.) That case, however, did not involve either the Clayton Act or any antitrust issues. The passing reference to the Clayton Act in *Studebaker,* by way of dictum, did not conclude that § 16 "expressly authorizes" injunctions against state court proceedings and did not even remotely overrule the Second Circuit's prior decision in *Lyons, supra.*

Equally inapposite are the other two cases cited by the Court below concerning § 2283. (App. 286-87.) *Helfenbein* v. *International Industries, Inc.,* 438 F.2d 1068, 1071 (8th Cir. 1971), neither held nor implied that § 16 "expressly authorizes" injunctions against state court proceedings. *Helfenbein* merely decided that, since the plaintiff's injury had not resulted from an antitrust violation, no

(Footnote continued on p. 26)

Potter v. *Carvel Stores of New York, Inc.*, 314 F.2d 45 (4th Cir. 1963), likewise involved companion state and federal lawsuits in which the state court defendant was the plaintiff in a federal antitrust action brought against the state court plaintiff. The District Court refused to enjoin the state action on the ground that it was barred by § 2283, specifically agreeing that "Section 16 of the Clayton Act, 15 U.S.C.A. § 26, which provides for private antitrust injunctive relief is not one of the 'Act of Congress' exceptions engrafted into the flat prohibition of 28 U.S.C.A. § 2283." 203 F. Supp. 462, 465 (D. Md. 1962). The Court of Appeals for the Fourth Circuit affirmed, holding that ". . . for the reasons stated by [the District Court], we think that the refusal to enjoin the state court proceedings is unassailable on appeal." 314 F.2d at 46.

See also the recent decision in *Carter* v. *Ogden Corp.*, 524 F.2d 74 (5th Cir. 1975), reversing an injunction issued under § 16 of the Clayton Act and holding "that under 28 U.S.C.A. § 2283 this injunction was prohibited. . . ."

2. The Decision Below Flouts This Court's Interpretation of the "Expressly Authorized" Exception to § 2283.

As previously stated (*supra*, pp. 22-23), this Court has repeatedly held that the exceptions to § 2283 are to be strictly and narrowly construed. In *Mitchum* v. *Foster*, 407 U.S. 225 (1972), this Court dealt specifically with the "expressly authorized" exception.

(Footnote continued from p. 25)

injunction of any sort was authorized by § 16. The Court did not even reach the question whether, if a proper showing of causation had been made, the injunction would nevertheless have been barred by § 2283. *United States* v. *Bayer Company*, 135 F. Supp. 65 (S.D.N.Y. 1955), was based on a different exception to § 2283—the "effectuate its judgments" exception—and does not even refer to the "expressly authorized" exception.

The Court in *Mitchum* (pp. 234-35) reviewed the seven federal statutes under which "the Court through the years found that federal courts were empowered to enjoin state court proceedings, despite the anti-injunction statute, in carrying out the will of Congress . . . ."[12] The Court pointed out that this had been essential "if the import and purpose of other Acts of Congress were to be given their intended scope" (*ibid.*).

Applying the same criteria, the Court then analyzed in depth "the import and purpose" of the statute involved in *Mitchum*—§ 1983 of the Civil Rights Act (407 U.S. at 239-40, 241-42):

> "Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against in-

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[12] The seven statutes enumerated by the Court are as follows: (1) the provisions in the Bankruptcy Act expressly providing for stays of suits against the bankrupt; (2) 28 U.S.C. § 1446(e), providing that upon the filing of a petition to remove a state suit to federal court the "State court shall proceed no further unless and until the case is remanded"; (3) 46 U.S.C. § 185, providing that upon filing of a shipowner's petition in federal court for limitation of his liability and deposit of the requisite funds by the shipowner with the court, "all claims and proceedings against the owner with respect to the matter in question shall cease"; (4) 28 U.S.C. § 2361, providing that in federal interpleader actions "a district court may . . . enter its order restraining [all claimants] . . . from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument, or obligation involved in the interpleader action"; (5) 11 U.S.C. § 203(s)(2), the provision of the Frazier-Lemke Farm Mortgage Act expressly staying "all judicial or official proceedings in any court"; (6) 28 U.S.C. § 2251, providing that a federal court before which a habeas corpus proceeding is pending may "stay any proceeding against the person detained in any State Court . . . for any matter involved in the habeas corpus proceeding"; (7) the Emergency Price Control Act of 1942, establishing a wartime system of judicial remedies and specifically authorizing the Government to bring enforcement actions in both state and federal courts.

cursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation.

"It is clear from the legislative debates surrounding passage of § 1983's predecessor that the Act was intended to enforce the provisions of the Fourteenth Amendment 'against state action, . . . whether that action be executive, legislative, or *judicial.*' Ex parte Virginia, 100 U.S. 339, 346 (emphasis supplied). Proponents of the legislation noted that state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights." (Emphasis the Court's; footnote omitted.)

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"Those who opposed the Act of 1871 clearly recognized that the proponents were extending federal power in an attempt to remedy the state courts' failure to secure federal rights. *The debate was not about whether the predecessor of § 1983 extended to actions of state courts, but whether this innovation was necessary or desirable.*

"This legislative history makes evident that Congress clearly conceived that it was altering the relationship between the States and the Nation with respect to the protection of federally created rights; it was concerned that state instrumentalities could not protect those rights; it realized that state officers might, in fact, be antipathetic to the vindication of those rights; *and it believed that these failings extended to the state courts.*

"Section 1983 was thus a product of a vast transformation from the concepts of federalism that had prevailed in the late 18th century when the anti-injunction statute was enacted. *The very purpose of § 1983 was to interpose the federal courts between the States and*

the people, as guardians of the people's federal rights —to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative or judicial.'" (Italics added; footnote omitted.)

Based on that analysis, this Court determined that § 1983 qualified as the *eighth* statute within the "expressly authorized" exception.

In this case, in holding that § 16 of the Clayton Act also meets that standard, the Court below wholly misapplied the *Mitchum* rationale. The decision below represents, in fact, a broad departure from the whole line of this Court's cases concerning § 2283 and sets forth an approach which, if generally accepted, would have serious consequences for the relationship between the federal and state courts, not only in the antitrust field but in many other areas of the law as well.

Without even attempting to analyze "the import and purpose" of § 16, in the way this Court analyzed § 1983 in *Mitchum*, the Court below held that § 16 created a "uniquely federal remedy" merely on the ground that its grant of injunctive powers to enforce the antitrust laws was conferred only on the federal courts. (App. 286, 288.) According to the Court below (*ibid.*), this jurisdiction "would be frustrated" if Vendo were allowed to enforce its state court judgments. However, it is well established that a grant of exclusive jurisdiction does not justify holding that the "expressly authorized" exception applies. *Amalgamated Clothing Workers of America* v. *Richman Bros.*, 348 U.S. 511, 515 (1955).[13]

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[13] In *Amalgamated*, this Court specifically held that § 2283 may bar an injunction even where a state court has acted "wholly without jurisdiction over the subject matter, having invaded a field preempted by Congress." Accord, e.g., *T. Smith & Son, Inc.*, v. *Williams*, 275 F.2d 397 (5th Cir. 1960); *Vernitron Corp.* v. *Benjamin*, 440 F.2d 105, 108 (2d Cir.), *cert. denied*, 402 U.S. 987 (1971). In the instant case, there is not even any such preemption.

Furthermore, in the context of this case, it is especially clear that Stoner's federal antitrust remedy against Vendo's prosecution of its state court action was by no means "uniquely federal." While the Clayton Act confers only federal jurisdiction of *original claims for relief* brought under the federal antitrust laws, it is well-settled that the state courts have jurisdiction to adjudicate federal antitrust *defenses* to state law claims, as the Illinois Appellate Court specifically held in this case. (App. 77-79.)[14] Here Stoner and Stoner Investments had such a remedy, but they chose to withdraw their federal antitrust defense at the opening of the second state court trial. If that defense to Vendo's claims was valid, they could and should have asserted it in the state court preceedings, and they could thereby have "nipped in the bud" any alleged "injury" from the state action.

Unlike this Court's decision in *Mitchum,* the decision below does not remotely explain *how* § 16 would be "frustrated" or "could [not] be given its intended scope" if federal courts were not empowered to enjoin state court proceedings. Stripped of such conclusions, the decision boils down to the proposition that the state suit would allegedly be enjoinable in the absence of § 2283 and therefore the application of § 2283 would impair the exercise of equity jurisdiction *in this case.* But the whole object of § 2283 is to bar certain injunctions which might otherwise be appropriate, *"regardless of how extraordinary the particular circumstances may be"* (407 U.S. at 229, italics added). Plainly the possible impact on any particular case —as distinguished from achievement of an overall statutory purpose—does not justify a conclusion that a federal statute "expressly authorizes" stays of state court proceedings. Indeed, if it were otherwise, then *every* federal statute

[14] See also, e.g., *Lyons* v. *Westinghouse Electric Corp.*, 222 F.2d 184, 187 (2d Cir.), *cert. denied,* 350 U.S. 825 (1955); IA Moore, Federal Practice ¶ 0.208 (2d ed. 1974), p. 2325.

authorizing injunctive relief would fall within the "expressly authorized" exception.

Even more important, the impropriety of holding that § 16 "expressly authorizes" stays of state proceedings is demonstrated by comparing § 16 with the seven statutes reviewed in *Mitchum* (407 U.S. at 234-35) and with § 1983 of the Civil Rights Act. Each of these statutes either contains specific language providing for stays of state proceedings or, in the absence of such language, necessarily requires *by its very nature and function* that conflicting state judicial proceedings must be enjoined in order to achieve the purpose of the statute.

Four of the seven statutes reviewed in *Mitchum*[15] contain specific language authorizing stays of state court proceedings (the Bankruptcy Act, the Interpleader Act, the Frazier-Lemke Farm Mortgage Act, and the Federal Habeas Corpus Act). A fifth statute, concerning federal removal procedures, specifically provides that "the state court shall proceed no further unless and until the case is remanded." A sixth statute, dealing with shipowners' liability, specifically provides that on the deposit of certain funds "all claims and proceedings against the owner with respect to the matter in question shall cease." The seventh statute, the Emergency Price Control Act of 1942, was a wartime measure construed by this Court as impliedly amending the Anti-Injunction Statute because the Act provided an intricate system of judicial remedies and authorized the Government to enforce the Act in both federal and state courts. Then, in *Mitchum,* as already noted, the Court held that § 1983 of the Civil Rights Act also fell within the "expressly authorized" exception because the "very purpose of § 1983" was to transform federal-state relations and to impose restraints on state governmental bodies including state courts.

[15] See footnote 12, *supra.*

Section 16 of the Clayton Act is clearly not a statute of this type. Even apart from the absence of specific language providing for stays of state proceedings, there is not the slightest basis (and the Court of Appeals pointed to none) for believing that § 16—unlike, e.g., § 1983 of the Civil Rights Act—was designed to prevent abuses by state courts or that it was "the will of Congress" (407 U.S. at 234) to place injunctive restraints on state court proceedings.

Moreover, the special concerns expressed in *Mitchum* concerning the role of the federal courts in enforcing federal constitutional guaranties against the states and their courts have no counterpart in the area of the antitrust laws. While § 1983 may have been "a product of a vast transformation from the concepts of federalism that had prevailed in the late 18th century" (407 U.S. at 242), there surely is no reason to conclude that any such transformation in federal-state relations was contemplated by the passage of the federal antitrust laws generally or § 16 of the Clayton Act in particular. On the contrary, it appears that Congress intended thereby to continue the complementary relationship between state and federal jurisdictions that has prevailed in the field of business regulation ever since the Supreme Court's decision in *Cooley* v. *Board of Wardens*, 53 U.S. 299 (1852). See, e.g., *Gulf Oil Corp.* v. *Copp Paving Co., Inc.*, 419 U.S. 186 (1974); *United States* v. *American Building Maintenance Industries*, 422 U.S. 271 (1975).

Of course, as the Court below pointed out, the federal antitrust laws express an important public policy. But the same is true of numerous other federal statutes as well as the Anti-Injunction Statute itself. See, e.g., *Oklahoma Packing Co.* v. *Oklahoma Gas and Electric Co.*, 309 U.S. 4, 8-9 (1939). Clearly the importance of the antitrust laws is not a proper criterion for determining whether the "expressly authorized" exception to § 2283 is applicable.

B. The District Court's Injunction Was Not "Necessary in Aid of" Its Jurisdiction within the Meaning of § 2283.

The "necessary in aid of jurisdiction" exception—which was also relied upon by the District Court in this case but not by the Court of Appeals—is plainly inapplicable.

Like the entire statute of which it is a part, this exception must be strictly and narrowly construed. See *Atlantic Coast Line R. Co.* v. *Brotherhood of Locomotive Engineers, supra*, 398 U.S. at 295.

The long-standing rule with respect to *in personam* actions has been that "[e]ach court is free to proceed in its own way and in its own time, without reference to the proceedings in the other court", allowing for the possibility that either may go to judment first. *Kline* v. *Burke Construction Co.*, 260 U.S. 226, 230 (1922); *Atlantic Coast Line R. Co.* v. *Engineers, supra*, 398 U.S. at 295-296. *Cf. National Labor Relations Board* v. *Nash-Finch Co.*, 404 U.S. 138, 141-142 (1971); *Amalgamated Clothing Workers of America* v. *Richman Bros., supra*, 348 U.S. at 518-519.

These principles were recently applied by the Court of Appeals for the Third Circuit in *Jennings* v. *Boenning and Co.*, 482 F.2d 1128 (3d Cir. 1973), and *In re Glenn W. Turner Enterprises Litigation*, 521 F.2d 775, 780 (3d Cir. 1975). In both cases, the Court of Appeals reversed a preliminary injunction against execution of a prior state court judgment and specifically rejected the applicability of the "necessary in aid of jurisdiction" exception to § 2283.

The *Jennings* case was procedurally very similar to the present one. Defendant Boenning had previously sued the Jennings (who were the plaintiffs in the federal suit) in state court and obtained a judgment based on a state-law cause of action. The Jennings could have, but did not, raise a defense to the state suit based on the Securities and Exchange Act of 1934. In the course of their subsequent federal suit under that Act for damages against Boenning,

the Jennings sought a preliminary injunction against execution of the state court judgment. The Court of Appeals held that, even ". . . assuming without deciding that [the plaintiffs] have a proper claim for money damages the federal Anti-Injunction Act prevents the issue of an injunction restraining state proceedings to enforce the state judgment." (482 F.2d at 1135.)

The Court of Appeals for the Second Circuit came to the same conclusion in *Vernitron Corp.* v. *Benjamin,* 440 F.2d 105, 108 (2d Cir. 1971), also arising under the Securities and Exchange Act of 1934, and holding that "Vernitron should not be permitted to use the exceptions to Section 2283 as a means of avoiding an adverse state decision and in effect obtaining appellate review thereof in a federal district court."

This has also been the law in antitrust cases. See, e.g., *Red Rock Cola Co.* v. *Red Rock Bottlers,* 195 F.2d 406 (5th Cir. 1952); *Lyons* v. *Westinghouse Electric Corp.,* 109 F.Supp. 925 (S.D.N.Y. 1952), *aff'd,* 201 F.2d 510 (2d Cir.), *cert. denied,* 345 U.S. 923 (1953).

In its very recent decision in the *Glenn W. Turner Enterprises* case, *supra,* the Third Circuit held that § 2283 bars a federal injunction against proceedings to collect a state court judgment even where the effect of those proceedings would be to render the federal defendants incapable of paying any judgment that might be obtained against them in the federal suit. The Court held that such facts did not bring such an injunction within the "necessary in aid of jurisdiction" exception, ". . . especially . . . where the federal action, as here, has not culminated in a judgment. . . ." (521 F.2d at 780.)

In the instant case, according to the District Court, its application of the "necessary in aid of jurisdiction" exception to § 2283 was based entirely on its concern that Vendo's

enforcement of its judgments against Stoner and Stoner Investments might result in Vendo's taking control over Stoner Investments and Lektro-Vend, thereby possibly eliminating two of the three plaintiffs in the federal suit as independent parties. (App. 241.) The District Court reasoned that, in that event, there would no longer be a "case or controversy" within the meaning of Article III of the United States Constitution *as to those two plaintiffs.*

The Court's reasoning is wrong on the law and wrong on the facts. To begin with, we are unaware of even a single decision holding that a state court proceeding may be enjoined to preserve compliance with the "case or controversy" requirement. Even more clearly, there is no justification for enjoining a state court proceeding to preserve compliance with that requirement *as to only some of the plaintiffs* in the federal case.

The decision below ignores the obvious fact that Stoner (or his administrator)—irrespective of Stoner Investments and Lektro-Vend—would continue to be an adverse party and, therefore, the District Court would not in any event be deprived of jurisdiction under Article III. Furthermore, both before the hearing on the preliminary injunction motion and afterwards, Vendo made a variety of proposals on the record—including two proposed consent decrees—to insure that Stoner Investments and Lektro-Vend would remain independent of Vendo's ownership and control (see *supra,* p. 13). Under no possible view of the law under § 2283, however, novel or contrived, can any such injunction be regarded as "necessary" to protect the Court's jurisdiction.

Although not mentioned by the District Court with respect to § 2283, the respondents argued in the Court of Appeals that a preliminary injunction against collection of the state judgments is needed to enable plaintiffs to finance their federal treble-damage litigation. In this connection, they pointed out that "Stoner and Stoner Inv. sustained

$661,000 in legal fees and expenses" and asserted that their liquid assets "have been earmarked for the prosecution of this case".[16] Thus, according to respondents' argument below, collection of the state judgments should be enjoined *so that the money can instead be paid to their counsel in the federal case.* The short answer is that the "necessary in aid of jurisdiction" exception to § 2283 does not permit enjoining state court judgments in order to finance federal litigation.

Indeed, as the Third Circuit recently held in the *Glenn W. Turner Enterprises* case, *supra,* "State litigants should not be barred from collecting fully on their judgments merely to facilitate the collection of judgments resulting from federal actions" and "This is especially true where the federal action, as here, has not culminated in a judgment. . . ." 521 F.2d at 780. The Court further pointed out that ". . . the inability of defendants to pay a [federal] judgment . . . still would not be sufficient justification to issue the federal injunction" (*ibid.*). *A fortiori,* state court judgments cannot be enjoined to enable plaintiffs to *seek* a federal judgment.

II. THE INJUNCTION VIOLATES FUNDAMENTAL PRINCIPLES OF COMITY AND FEDERALISM.

In *Younger* v. *Harris,* 401 U.S. 37, 43-45 (1971), and in *Mitchum* v. *Foster, supra,* 407 U.S. at 243, this Court reaffirmed the principles of comity and federalism "that must restrain a federal court when asked to enjoin a state court proceeding," even in a case where such an injunction is not absolutely barred by § 2283. See also *Rizzo* v. *Goode,* 423 U.S. 362, 379-80 (1976); *Cousins* v. *Wigoda,* 409 U.S. 1201, 1205-06 (1972).

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[16] Brief of Plaintiffs-Appellees (7th Cir.), pp. 54, 55. Subsequently, in addition to 1975 payments of $73,918.37, the respondents submitted to the District Court a petition for approval of payment of additional fees and expenses amounting to $269,925.21, bringing the total to $1,004,843.58 (of which $850,156.31 has been paid). Transcript of Proceedings, October 1, 1976, p. 10.

Thus, such principles apply even where an injunction is sought under a federal statute that "expressly authorizes" injunctions against state court proceedings. In *Huffman* v. *Pursue, Ltd.,* 420 U.S. 592 (1975), this Court specifically held that principles of comity and federalism barred an injunction against a civil state court proceeding in the context of a suit brought under § 1983 of the Civil Rights Act —the very statute which *Mitchum* held was designed to afford protection against unconstitutional acts by (*inter alia*) state courts.

Principles of comity and federalism are no less applicable to injunctions sought under § 16 of the Clayton Act. See, e.g., *Response of Carolina* v. *Leasco Response, Inc.,* 498 F.2d 314 (5th Cir.), *cert. denied,* 419 U.S. 1050 (1974), and *Red Rock Cola Co.* v. *Red Rock Bottlers,* 195 F.2d 406 (5th Cir. 1952). In both cases, federal injunctions against state court proceedings were sought under § 16. In both cases, the requested injunctions had been granted by the district courts. But in both cases the Fifth Circuit reversed, holding that—even apart from § 2283—the injunctions were improper on the basis of principles of comity and federalism.

These principles are controlling even in the far less sensitive situation where the state court proceeding being attacked in federal court is in a preliminary unadjudicated status. But considerations of comity and federalism are especially critical where, as in the present case, the state court proceeding being attacked is a proceeding to enforce final judgments which had been unanimously affirmed on appeal by the highest court of the state (and which this Court had declined to review on certiorari).

Furthermore, the state courts specifically provided "an opportunity for full and fair litigation" of the very same federal antitrust issues. See *Stone* v. *Powell,* 96 S.Ct. 3037, 3046, 3052 (1976). *But the respondents then voluntarily withdrew those issues from consideration by the state*

courts. They did so, it should be emphasized, *after* the Illinois Appellate Court, on appeal from the first state court trial, expressly held that the state trial court should hear and determine the matter. (App. 77-79.)

Thus, not only do respondents attack the final, fully reviewed judgments of the state courts on grounds which they could have presented to the state courts by way of defense, but the respondents do so on grounds which they actually *did* present, which the state courts held they were *entitled* to present, and which *would have been adjudicated* by the state courts except for respondents' *deliberate withdrawal* of those issues from the state proceeding. To allow federal courts to upset state court judgments on such grounds would make a mockery of the concept of federalism and would provoke that needless friction between state and federal courts that the principle of comity is intended to prevent.

Nevertheless, in direct conflict with decisions of the Fifth Circuit (*supra,* p. 37), the Court below held that principles of comity and federalism were inapplicable in an action under § 16 of the Clayton Act on the ground that respondents' "exclusive remedy" was in the federal courts. The Court's decision is erroneous both in law and in fact. Clearly a federal injunction against the enforcement of the state court judgments was never Stoner's "exclusive remedy" under the federal antitrust laws. As already pointed out, Stoner and Stoner Investments had another remedy in the state courts—a remedy which, if their defense was meritorious, would have prevented the very "injury" of which they now complain.

No greater insult to the processes of a state judicial system can be conceived than that which has occurred here: Having deliberately abandoned the assertion of their federal antitrust defense in the state courts, which had provided them with "an opportunity for full and fair litigation" of that defense, and having elected to proceed to final

judgment in the state courts on that basis, the Stoner group then attacked the result of that process by asserting in federal court, as justification for an injunction against the state judgments, the same issues that they had withdrawn from the state courts' consideration. Thus, far from being inapplicable, principles of comity and federalism are particularly relevant in the circumstances of this case and should have barred such a flagrant abuse of federal equity power.

III. THE DISTRICT COURT LACKED JURISDICTION TO REVERSE, REVIEW OR REVISE THE FINAL JUDGMENTS OF THE STATE COURTS BY COLLATERAL ATTACK.

The preliminary injunction issued by the District Court is nothing more than an attempt to reverse by collateral attack the final judgments of the Illinois courts in favor of Vendo and against Stoner and Stoner Investments. It seeks to abort the results of Vendo's successful state court action. Furthermore, it attacks that action on the basis of the very same federal antitrust issues which Stoner and Stoner Investments were explicitly afforded an opportunity to present to the state courts, by way of defense to Vendo's claims, but which they then voluntarily withdrew from the state courts' consideration.

A lower federal court has no jurisdiction to review a final judgment of a state court of competent jurisdiction. See, e.g., *Rooker* v. *Fidelity Trust Co.,* 263 U.S. 413 (1923). Such a judgment, affirmed by the Illinois Supreme Court, can be reviewed only by this Court (which in this case denied certiorari) and not by any lower federal court.

In *Atlantic Coast Line R. Co.* v. *Brotherhood of Locomotive Engineers,* 398 U.S. 281, 286 (1970), this Court pointed out:

> "Thus from the beginning we have had in this country two essentially separate legal systems. Each system

proceeds independently of the other with ultimate review in this Court of the federal questions raised in either system".

The Court also warned (*ibid.*):

"Obviously this dual system could not function if state and federal courts were free to fight each other for control of a particular case."

See also, e.g., *Singer* v. *A. Hollander & Son, Inc.*, 202 F.2d 55, 59 (3d Cir. 1953) (". . . it is not our business to review the correctness of fact conclusions reached by the Vice Chancellor of the State of New Jersey and its Supreme Court"); *In re Glenn W. Turner Enterprises Litigation*, 521 F.2d 775, 780 (3d Cir. 1975) (". . . the state and lower federal courts are independent, and . . . a federal action is not superior to a state proceeding merely because of its federal character. . . . As a corollary to this principle, judgments resulting from federal actions are not preferred to judgments resulting from state actions because of their federal character.").

In this case, the District Court itself recognized the validity of these fundamental principles in rejecting plaintiffs' claim for relief under the Civil Rights Act (42 U.S.C. § 1983). The Court (App. 226-27, n.1) correctly held that it "has no jurisdiction to entertain this claim" and (quoting another decision) that ". . . no court of the United States other than the United States Supreme Court can entertain a proceeding to reverse or modify a state court judgment which is in error." Yet, inexplicably, the District Court concluded that it had such jurisdiction under § 16 of the Clayton Act. (App. 232.) The Court of Appeals "agreed" on the ground that the Illinois Supreme Court "expressly refused to consider" the federal antitrust issues raised by the Stoner group. (App. 289.)

However, although acknowledged in a footnote (App. 282), the Court below then disregarded the fact that it was

the respondents themselves who withdrew the federal antitrust issues from consideration by the state courts, and that it was only for this reason that the Illinois Supreme Court did not pass on those issues. Clearly, the Illinois Supreme Court never "expressly refused to consider" the federal antitrust issues. No such issues were even before the Illinois Supreme Court since they had been withdrawn by respondents years before and had never been raised again; and the Illinois Supreme Court merely noted that fact in its opinion.

In any event, the decision of the Illinois Supreme Court is final and entitled to full faith and credit. This Court, which is the only federal court with power to review the final decision of the highest court of a state, denied certiorari, and the matter should have rested there. The antitrust laws confer no greater power on a federal district court to perform this Court's reviewing functions than the Civil Rights Act or any other federal law. See *Atlantic Coast Line R. Co.* v. *Brotherhood of Locomotive Engineers*, *supra*, 398 U.S. at 286.

CONCLUSION

Under the analysis of the Court below, wherever a federal statute provides for a private injunction action maintainable only in the federal courts, then:

1. The bar of § 2283 would not apply, and state court proceedings would therefore be subject to federal stays without regard to the Anti-Injunction Statute;

2. No considerations of comity or federalism would apply in considering whether to grant such injunctions; and

3. Even a final judgment of a state court, reviewed by the highest court of that state, would be subject to collateral review by a federal district court in such an injunction action.

Through this technique, state court defendants would be able to utilize the federal courts to frustrate and interfere with state court proceedings, and (as in this case) even to nullify final judgments reviewed by the highest state courts. Moreover, it is not only the antitrust laws that might be utilized in that way by state court defendants, but indeed many other federal statutes as well.

Reversal of the decision below is essential, we submit, in order "to prevent needless friction between state and federal courts," *Oklahoma Packing Co.* v. *Oklahoma Gas and Electric Co.*, 309 U.S. 4, 8-9 (1939), and to respect the "fundamental constitutional independence of the States and their Courts." *Atlantic Coast Line R. Co.* v. *Brotherhood of Locomotive Engineers, supra,* 398 U.S. at 287.

For the foregoing reasons, it is respectfully submitted that this Court should reverse the judgment of the Court of Appeals and vacate the preliminary injunction prohibiting enforcement of the final state court judgments.

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